

Serial No. 10/644,130
Art Unit 3727

Amendment A

Remarks:

Responsive to the Official Action mailed January 24, 2006, Applicant respectfully requests reconsideration, reexamination and allowance of claim 6 in view of the above-noted amendment, the following remarks and the concurrently filed Terminal Disclaimer.

First Examiner Elkins has rejected claim 6 under 35 USC 112, second paragraph and has identified a number of instances of antecedent issues. As discussed with Examiner Elkins on April 21, 2006, Applicant has amended claim 6 in an earnest effort to address the section 112 issues. If the Examiner believes that other issues remain, it is requested that the undersigned be contacted.

As to the double-patenting rejection, Applicant submits that the Terminal Disclaimer addresses and overcomes this rejection and respectfully requests that this rejection be withdrawn.

The Examiner has next rejected claim 6 under 35 USC 103(a) as unpatentable over France 2642404 (FR '404) in view of any of Koehler, U.S. Patent No. 3,744,659, Cornell, U.S. Patent No. 3,669,338 or Himelreich, U.S. Patent No. 3,472,571. The Examiner has taken the position that FR '404 discloses all of the structure of the claimed invention except for the formation of the configuration as a rigid unit, and that each of Koehler, Cornell or Himelreich teaches that it is known to make a container with folds formed between rigid sections.

The Examiner concludes that it would have been obvious to make the container of FR '404 as a rigid unit as taught by any Koehler, Cornell or Himelreich to provide a stronger container with less chance of damage during use. The Examiner noted further that the container of FR '404 is considered to be "preformed" insofar as it is formed from a blank and certain sections are folded upwardly prior to final completion of the container.

First, Applicant submits that even if one were to combine FR '404 with the art of record it still would not have made obvious to the claimed invention. FR '404 is the only document that arguably shows a container made from a single "piece" of material or a single unit. Each of the others, requires multiple units or elements to form the package. Koehler appears to have cuts in material at the sidewall/bottom wall corner as well as separate top piece. Cornell has separate

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top and bottom sections, and requires still other elements to form the ends (to close the container), and Himmelreich is formed from what appears to be a relatively large number of elements (see, e.g., the corners at FIGS. 3 and 5, which appear to show butt-type joints). Accordingly, none of the secondary art or record discloses a single or unitary container element.

As to the combination of FR '404 and the other art of record, Applicant submits that even if one were to "take" the structure of FR '404 and the teaching of the other art of record, it would not result in the claimed invention. Specifically, the FR '404 patent does not disclose a container that has the structural integrity of the claimed invention. There are far too many fold lines or score lines to provide a structure that has a rigidity that in any manner approaches that of the claimed invention.

The claimed invention is a container that is formed from a pre-formed unit having a U-shaped cross-section. The walls are rigid and are not bendable relative to the to the bottom wall. None of the art of record can make this claim. The presently claimed invention includes five distinct sections (a main body, a pair of first closure panels and a pair of second closure panels) each having a base or bottom wall and side walls that are rigidly formed relative to each other. None of the art of record has such a structure. And, the presently claimed invention forms closed container simply by folding the second closure panels over the first closure panels and the combination of the first and second closure panels over the main body. Again, none of the art of record discloses this structure.

It is applicants position that any combination of the art of record simply fails to disclose this claimed structure. Accordingly, Applicant submits that claim 6, as amended comports with section 112 and is allowable over the art of record.


Applicant believes that there is no fee due in connection with the present AMENDMEN A, other than that associated with the TERMINAL DISCLAIMER. If, however, there is a fee due in connection with the present submittal, the Commissioner is hereby authorized to charge any under-payment or credit any over-payment to Deposit Account No. 50-2035.

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Should there be any questions or concerns in connection with the present submittal, it is respectfully requested that the undersigned be contacted.

Respectfully submitted,

By 

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